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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,824	03/23/2005	Alain Rambach	37991-0035	6976
26633	7590	02/21/2008	EXAMINER	
HELLER EHRMAN LLP 1717 RHODE ISLAND AVE, NW WASHINGTON, DC 20036-3001			LILLING, HERBERT J	
			ART UNIT	PAPER NUMBER
			1657	
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			02/21/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/528,824

**Applicant(s)**

RAMBACH ET AL.

**Examiner**

HERBERT J. LILLING

**Art Unit**

1657

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-98 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 17-51 is/are objected to.
- 8) ☒ Claim(s) 52-98 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 10, 2008 has been entered.

2. Claims 1-16 and new claims 17-98 have been submitted on January 10, 2008.

3. Claims 17-51 will not be considered because the amendments filed January 10, 2008 are objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "A gelled culture.....an antibiotic added to the medium before the medium gels, wherein the antibiotic ....."

Applicant is required to cancel the new matter in the reply to this Office Action.

4. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1. In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

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Group I, claim(s) 52-77, drawn to a **first method** of detecting the presence or absence of methicillin- resistant Staphylococcus aureus (MRSA) in a sample from a patient, comprising:

(a) inoculating a medium comprising:

(i) **nutrients** for the growth of said MRSA;

(ii) **an antibiotic**, wherein the antibiotic is:

cefoxitin,  
cefmetazole,  
or  
moxalactam;

and

(iii) **a chromogenic agent** that releases a chromophore after hydrolysis with an enzyme that is active in said MRSA, with said sample;

(b) incubating said medium under conditions that allow growth of said MRSA;

(c) detecting, on said medium, the presence or absence of said MRSA by virtue of the presence or absence of colored colonies.

Group II, claim(s) 78-98, drawn to a method of detecting the presence or absence of methicillin- resistant Staphylococcus aureus (MRSA) in a sample from a patient, comprising:

(a) inoculating a medium comprising:

(i) **nutrients** for the growth of said MRSA;

(ii) **an antibiotic**, wherein the antibiotic is:

flomoxef;

and

(iii) **a chromogenic agent** that releases a chromophore after hydrolysis with an enzyme that is active in said MRSA, with said sample;

(b) incubating said medium under conditions that allow growth of said MRSA;

(c) detecting, on said medium, the presence or absence of said MRSA by virtue of the presence or absence of colored colonies.

Invention I is patentably distinct from Invention II since the compounds employed are distinct from each other.

Restriction for examination purposes as indicated is proper because these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification with respect to the compound;
- (b) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (c) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.**

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement

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will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. This application contains claims directed to the following patentably distinct species

A) Whereby in Invention II the medium comprises: (i) **nutrients** (ii) **an antibiotic**, and (iii) a **chromogenic agent** whereby the antibiotic is selected from :

- a) cefoxitin,
- b) cefmetazole,
- c) moxalactam.
- d) combination of any above-please specify.

B) Whereby the medium comprises: (i) **nutrients** (ii) **an antibiotic**, and (iii) a **chromogenic agent** and the chromogenic agent is selected from:

- a) 5-bromo- 6-chloro-3-indoxyl-phosphate,
- b) other please specify.

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C) Whereby the medium comprises: (i) **nutrients** (ii) **an antibiotic**, and (iii) a **chromogenic agent** and (iv) **whereby (iv) is:**

- a) not required for the elected invention;
- b) further comprising required for elected invention 5-bromo-4-chloro-3-indoxyl galactoside ,
- c) further comprising required for elected invention 5-bromo-4-chloro-3-indoxyl glucuronide,
- d) combination of b and c;
- e) any of above and other-please specify the other the components.

D) Whereby the medium further comprises one or more of the following:

- a) not required for the elected invention;
- b) vancomycin,
- c) teicoplanin,
- d) avoparcin,
- e) mixture of any of above b, d or/and d-please specify the mixture;

which b, c, d, or e is required for the elected invention.

E. Whereby the medium further comprises:

- a) not required for the elected invention,
- b) deferoxamine which is required for the elected invention.

4. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 52 and 76 are generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record



showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species, including any claims subsequently added.**

**Please contact this Examiner for any assistance for the above paragraph pertaining to the claims within the scope of the elected invention.**

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HERBERT J. LILLING whose telephone number is 571-272-0918. The examiner can normally be reached on WORK AT HOME MAXIFLEX.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JON WEBER can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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(571) 272-0918  
Art Unit 1657  
February 15, 2008

/HERBERT J LILLING/  
Primary Examiner, Art Unit 1657